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Case No. 07-1-0013

SECOND ORDER ON COMPLIANCE - Finding Continuing Non-Compliance

STEVENS COUNTY,

Respondent(s).

I. RELEVANT PROCEDURAL HISTORY

On October 6, 2008, the Board issued its Final Decision and Order (FDO) in this matter in which, the Board concluded that Petitioners demonstrated, in part, Stevens County was not protecting critical areas as required by the GMA pursuant to RCW 36.70A.060, .172, .020(9), and .020(10). This lack of protection was based on the County's

1 failure to enact design standard regulations, specifically those set forth in Stevens County
2 Code (SCC) 3.11 and 3.16, to protect all of the functions and values of critical areas.¹

3 In response to the FDO, Stevens County took legislative action with the adoption of
4 Ordinance No. 3-2009 on February 2, 2009, which the Board addressed in its First Order on
5 Compliance.² With this Order, the Board determined the County's compliance efforts did
6 not adequately address the areas of non-compliance identified by the Board in the October
7 2008 FDO.³ Therefore, the Board issued an Order of Continuing Non-Compliance and set a
8 deadline of August 14, 2009, for Stevens County to take legislative action to achieve
9 compliance.

10 **II. DISCUSSION AND ANALYSIS**

11 As of the date of the Compliance Hearing, the Board has not received a Statement of
12 Actions Taken to Comply (SATC) from Stevens County as was required by the April 2009
13 Compliance Order.⁴ It is particularly troublesome to the Board that Stevens County has, in
14 effect, ignored the Board's directives as evidenced by its failure to file a SATC by the
15 required date. The Board expects local jurisdictions to comply with deadlines established
16 for the filing of SATCs and, Steven County's lack of response to the Board's Order is not
17 taken lightly.

18 The Board does note that subsequent to the issuance of the April 2009 Compliance
19 Order, Stevens County appealed the Board's Order to Stevens County Superior Court⁵ and,
20 in July 2009, the County filed a Motion to Stay the Board's Orders. Arguments in regards to
21 this motion were heard on August 11, 2009, by the Honorable Judge Baker, but apparently

22 ¹ FDO, at 41-53.

23 ² On May 8, 2009, in response to a Motion for Reconsideration filed by Stevens County, the Board issued an Order on
Reconsideration which denied the County's Motion in its entirety.

24 ³ With this April 2009 Compliance Order, the Board found continuing non-compliance because Stevens County had failed
to adopt regulations which satisfied the GMA's requirements to protect the functions and values of critical areas as
provided in RCW 36.70A.020(10), RCW 36.70A.060(2), and RCW 36.70A.172.

25 ⁴ The April 2009 Compliance Order required Stevens County to file a SATC with the Board by August 24, 2009. The
Board also notes that Petitioners filed no objection to the County's failure to file a SATC.

26 ⁵ Stevens County Superior Court Cause No. 9-2-00312-1, filed June 5, 2009. With this appeal, Stevens County challenges
both the April 2009 Compliance Order and the May 2009 Order on Reconsideration.

1 the Court did not enter a written order.⁶ Since no signed Order of Stay was received by the
2 Board, on September 21, 2009, the Board sent the parties notification that it would hold the
3 scheduled Compliance Hearing unless a Court Order, signed by the judge, was received by
4 the Board.⁷

5 In response to this correspondence, Stevens County did not submit a signed Court
6 Order but, rather, submitted a copy of the Stevens County Superior Court Clerk's notes
7 which indicated that a stay was granted.⁸ The Board reiterated, via a September 25 e-
8 mail, that since no signed Court Order was provided the Compliance Hearing would be
convened as scheduled.

9 As noted above, Stevens County did not attend the Compliance Hearing despite
10 proper notice. The County is reminded that the Board expects professional conduct from
11 those appearing before it. WAC 242-02-120, provides: (Emphasis added)

12 *All persons appearing in proceedings before a board in a representative*
13 *capacity shall conform to the rules of professional conduct required of*
14 *attorneys before the courts of Washington.* If any such person does not
15 conform to such rules, the board may decline to permit such person to appear
16 in a representative capacity in any current or future proceeding before that
board or impose other appropriate sanctions.

17 In addition, WAC 242-02-710(1) authorizes the Board to enter an Order on Default when a
18 party to a proceeding has, after proper notice, failed to attend a hearing.

19 For Stevens County to simply not attend a compliance hearing, without any notice to
20 the Board, is simply a clear violation of the Board's Rules. Such a patent disregard for the
21 Board, the GMA, and the Board's Rules of Procedure will not be tolerated in the future and
22 the County is duly warned.

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25 ⁶ A copy of the Proposed Order of Stay was included as an attachment in e-mail correspondence from Stevens County
dated August 25, 2009.

26 ⁷ September 21, 2009 Board Correspondence to the Parties.

⁸ September 24, 2009 Stevens County Correspondence.

1 **Conclusion**

2 With the April 2009 Compliance Order, the Board concluded Petitioners carried their
3 burden of proof in demonstrating that Stevens County's efforts failed to achieve compliance
4 with the GMA, as provided in the Board's FDO. Here, due to the fact that Stevens County
5 failed to enact legislation to achieve compliance, the Board defaults to its conclusions and
6 the Petitioners' assertion, as set forth in the prior Compliance Order, which is incorporated
7 by reference in the present Order. As such, the Petitioners' burden of proof is sustained
8 and the Board enters an Order of Continuing Non-Compliance.

8 **III. ORDER**

9 The Board hereby issues an order of continuing non-compliance. Stevens County shall
10 take legislative action to achieve compliance no later than **ninety days (90)** from the date
11 issued. The following schedule shall apply:

12

Action	Due Date
Compliance Due	January 4, 2010
Statement of Actions Taken and Remanded Index from County due	January 19, 2010
Petitioners objections due	February 1, 2010
County's response	February 15, 2010
Compliance Hearing – Telephonic Call 360 407-3780 pin 146851#	February 23, 2009 @ 10:00 a.m.

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19 The compliance hearing shall be limited to Consideration of the legal issues found
20 non-compliant.

21 **SO ORDERED** this 6th day of October, 2009.

22
23 _____
Joyce Mulliken, Board Member

24
25 _____
John Roskelley, Board Member

Raymond L. Paolella, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration:

Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review:

Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

Enforcement:

The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail. Service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service:

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).